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We would gladly follow Mrs. Stowe through her extended tour, and look further with her searching vision at the works of God and the ways of men; but the rapid sale of her book supersedes the necessity and even the fitness of a detailed review; and what we have written has been written less with the purpose of introducing her to our readers, than of doing justice to our journal by a permanent record of a work which has ministered equally to our instruction and our edification.

ART. VIII. — 1. *Report of the Special Committee of the Board of Regents of the Smithsonian Institution, on the Distribution of the Income of the Smithsonian Fund, &c.* [Signed by HON. JAMES A. PEARCE.] Washington. 1854. 8vo. pp. 25.

2. *Report of HON. JAMES MEACHAM, of the Special Committee of the Board of Regents of the Smithsonian Institution, on the Distribution of the Income of the Smithsonian Fund, &c.* Washington. 1854. 8vo. pp. 63.

A POPULAR French writer, M. Jules Sandeau, whose works have a rather more elevated tone than that of the modern school of authors at Paris, has written an amusing story, which, moreover, has a good moral, describing the inconveniences suffered by a young musician who unexpectedly receives a large fortune by bequest. He becomes entangled in lawsuits and disputes, his domestic peace is invaded, he is at loss how to spend his money, and finally is driven to the conclusion that his legacy was no boon. He renounces his rights to the next heirs, and retires from the field, leaving the wrangling and the lawsuits to others. The idea of this story was somewhat bold even for a novelist, — for Miss Edgeworth says it never hurt a heroine to be an heiress; but we are not sure that a similar story must not be truly told when the final history of the Smithsonian bequest shall be written, for that history may not improbably have the same *denouement* with Sandeau's novel. Indeed, something of this sort was more

than hinted at in the debates which took place in Congress, even before the institution was established. It was the settled opinion of one class of statesmen, (which they took frequent opportunities to urge,) that Congress had made a mistake in accepting the bequest, and that the money ought to be paid back into the British Court of Chancery, to be claimed by anybody who thought he had a right to it. Now that the eight years' history of the institution has so bitterly disappointed the just expectations of the public, arguments of this sort might be renewed with increased force. If the institution is to be made merely a vehicle for personal aggrandizement and special favoritism, — if its care implies the abuse of a weighty public trust, and the appropriation of its funds for uses not authorized by law, — then the bequest will have been no boon, and the sooner the establishment is broken up, and the United States relieved of responsibility in the premises, the better.

It is fortunately the case, however, that an abuse cannot attain its full growth in this country without being perceived in time for the application of a remedy; so that even our most firmly established institutions find themselves powerless to resist the hand of reform, when guided by truth and right. We do not anticipate, therefore, so summary a catastrophe as the absolute extinction of the Smithsonian Institution, on account of the faults of its administration. We have too much confidence in the force of public opinion, not to speak of their own enlightened sense of their duty, to believe that the managers will not speedily adopt a course of proceeding different from that which they have hitherto pursued.

James Smithson, a subject of Great Britain, who had never visited this country, died in 1829. By his will, dated October 23, 1826, he bequeathed the whole income of his property, after the payment of a small annuity to an old servant, to his nephew, Henry James Hungerford, and, after his death, the whole property, "absolutely and for ever," to his child or children, legitimate or illegitimate, should he have any. The next sentence of the will is in these words: —

"In case of the death of my said nephew without leaving a child or children, or of the death of the child or children he may have had un-

der the age of twenty-one years or intestate, I then bequeathe the whole of my property, subject to the annuity of £ 100 to John Fitall, and for the security and payment of which I mean stock to remain in this country, *to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men.*"

In these few words is contained the whole of the munificent testator's directions with regard to the institution which he desired should carry his name down to posterity, in case of the failure of descendants to cherish it. It is probable enough, that, if he had regarded the contingency of the establishment of the institution as likely to happen, he would have given a more specific intimation of his wishes with reference to it. But whether this were the case or not, there is no other written evidence of his intentions and wishes than that included in the brief sentence just quoted. The words, though few, are intelligible and explicit, and he may well have supposed that it would be wiser not to trammel the United States with conditions and restrictions. He had never visited this country, and did not know what sort of an institution was needed here, or would be most beneficial. He was willing to leave the arrangement of details to Congress, and contented himself with the simple expression of the liberal wish that the institution should be "an establishment for the increase and diffusion of knowledge among men."

In 1836, July 1, Congress passed an act accepting the bequest, and authorizing the President to appoint an agent to prosecute in the English courts the claim of the United States to the money. This act provided that the money, when received, should be paid into the Treasury of the United States, and kept separate from the other funds, subject to such further disposal as might afterwards be provided by Congress. The third section of the act was in the following language: —

"And be it further enacted, That any and all sums of money, and other funds, which shall be received for or on account of said legacy, shall be applied in such manner as Congress may hereafter direct, for the purpose of founding and endowing at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men; to which application of the said

moneys and other funds the faith of the United States is hereby pledged."

Under this act, Hon. Richard Rush, of Pennsylvania, was appointed agent for the prosecution of the claim of the United States. He performed the duty with such success, that, notwithstanding the proverbial delays of legal proceedings, especially in the British Court of Chancery, the money was recovered, amounting to the sum of \$515,169, which was paid into the Treasury of the United States on the first day of September, 1838.

Nearly eight years passed, during which time Congress neglected to fulfil the pledge it had solemnly given, in the section quoted above, to apply the funds in accordance with the will of the testator. There were numerous difficulties in the way of its fulfilment. There were legislators who denied the right of the general government to undertake the establishment of such an institution. The strongest answer to these was found in urging the fact, that the institution was required to be established *at Washington*; and Congress is acknowledged to possess full powers of government and legislation over the District of Columbia, in which that city is located. The case was further embarrassed by an unfortunate investment of the funds in State bonds which had become nearly worthless, which could be made good only by a direct appropriation from the United States Treasury. The eminent statesman, John Quincy Adams, at the very last moment, on the day when the act passed the House of Representatives, of which he was then a member, April 29, 1846, moved to stay all proceedings until the States of Arkansas and Illinois should pay up the arrears of interest due upon their bonds, with the principal as it became due; and he proposed a bill in lieu of that before the House, requesting the President of the United States, "by the use of suitable means of moral suasion, and no others," to obtain the money from those States.

These circumstances tended to prevent the union of members of Congress upon any one of the several bills proposed; but the chief obstacle was the difficulty of deciding upon the plan of the institution, to do which was clearly understood to

be the especial duty of Congress. Members felt that they acted under a heavy responsibility. The faith of the United States was solemnly pledged, and upon them devolved the duty of redeeming the pledge. The act of Congress in which this pledge was given contained in the same section (quoted above) the provision that the funds should be applied in such manner as *Congress* might afterwards direct. It would have been a very simple thing, had members believed it a proper or satisfactory way of adjusting the matter, for Congress to pass a law appointing a board of gentlemen, a part of whom might have been selected from among the high officers of state, a part from Congress, and a part from citizens at large, and to confer on this board plenary power to arrange the plan of the institution according to their best judgment. In this way, by a law of a single section, Congress might have relieved itself of the weighty responsibility under which it rested to redeem a pledge already made, and of the perplexing task of deciding among conflicting plans.

But nothing so simple as this was proposed. Perhaps nobody was wise enough to think of it; perhaps members were jealous of allowing a board thus constituted to have the control of more than half a million of dollars; or perhaps they did not deem themselves justified in thus summarily confiding to unknown hands a work for the proper execution of which, *under the direction of Congress*, the faith of the nation had been pledged. Besides, if such a plan had been adopted, there would have been no assurance of permanency in the mode of action. A board with full discretionary powers might fluctuate in its proceedings, as its members changed. A plan laid down by Congress, on the other hand, would be final, until altered by Congress. The institution needed a permanent charter, for reasons similar to those for which the Union and the separate States have written constitutions. It was the universal opinion, that, if the institution were to be established at all, Congress must point out the plan; and the difficulty was to select a suitable plan. The brief words of *Smithson* allowed a wide field. A number of schemes were brought forward, many of which would have sufficiently well fulfilled the broad requirements of the will. Propositions

were made for blending different plans, or parts of plans, in the hope of satisfying the desires of a greater number than the friends of any one mode of operation. The various bills and amendments which were proposed would fill a large space, if we should attempt to rehearse them all. It is sufficient for our present purpose to say, that, after many plans had failed, a bill was finally passed, by the House of Representatives, April 29, 1846, in which the Senate concurred, and it was approved by the President, and became a law, August 10, 1846.

The institution was thus established, and all controversy with regard to its organization might have been supposed to have come to an end. The friends of various plans had had opportunities to bring them forward, to urge their advantages, and to submit them to the decision of Congress. Congress, in distinct understanding of the question, had made its decision, and entered it upon the statute-book. The law has never been altered or repealed. It remains as it was originally passed. To this law we must look to find what ought to be the plan of operation in the Smithsonian Institution, as deliberately adopted by Congress,—the power upon which was devolved the responsibility of carrying into effect the will of the testator.

The title of the act is “An Act to establish the Smithsonian Institution for the increase and diffusion of knowledge among men.” There is a preamble, which, after stating the language of the will, and the fact that the United States has received the property and accepted the trust, proceeds: “Therefore for the faithful execution of the said trust according to the will of the liberal and enlightened donor, be it enacted,” &c.

The act constitutes the President and Vice-President of the United States; the four Secretaries of State, the Treasury, War, and the Navy; the Postmaster-General, Attorney-General, Chief Justice, Commissioner of the Patent-Office, and Mayor of Washington, as the “*establishment*” by the name of the Smithsonian Institution for the increase and diffusion of knowledge among men.” The word “establishment” was used in conformity with the language of the will, and to avoid jealousy against anything bearing the name of a “corporation.” The eleven gentlemen mentioned have lit-

tle to do with the immediate management of the affairs of the institution; their position is chiefly an honorary one. The act provides that the business of the institution shall be conducted at Washington by a board of fifteen managers, or Regents, which is composed in a somewhat heterogeneous manner. It consists of the Vice-President of the United States, the Chief Justice, and the Mayor of Washington, three members of the Senate, three members of the House of Representatives, and six other persons, not members of Congress, two of whom must be members of the National Institute and resident in Washington, and the other four, inhabitants of States, no two of the same State. The terms of office of the Regents expire at different periods, which further complicates the composition of the Board. The Vice-President holds his place for four years, his term expiring on the 3d of March in alternate odd years. The Chief Justice has a life-tenure. The Mayor of Washington is elected for two years, his term expiring on the second Monday of June in even years. The members of the Senate serve as Regents until the expiration of the term for which they hold without re-election their office as Senators; their terms may thus vary from one to six years, but expire on the 3d of March in odd years. Members of the House serve as Regents for terms of two years, expiring on the fourth Wednesday of December in even years. The "six other persons" serve as Regents for terms of six years, classified so that two go out of office on the 10th of August in even years. It will thus be observed, that in some years a few months may witness considerable changes in the Board. Such a board might be trusted to carry out a prescribed plan, but would not be well adapted to contrive and maintain a scheme, the details of which the members could alter from time to time at their own pleasure.

The act provides that the Regents may elect of their own number one member as Chancellor, and three members to constitute an Executive Committee. Five members are a quorum. The Regents are paid their travelling expenses, but no salaries. The only paid officers mentioned in the act are the Secretary, who is elected by the Regents, and the assistants whom he is authorized to employ, with the advice of the

Regents, and who are removable by the Board, whenever in their judgment the interests of the Institution require the officers to be changed.

We have already stated, that the amount of the fund paid into the Treasury, September 1, 1838, was \$ 515,169. The act provides that this sum be lent to the United States, from the day it was received, with interest at the rate of six per cent. per annum, payable semiannually; and appropriates this interest (amounting to \$ 30,910) for the perpetual maintenance and support of the Institution, directing that all expenditures and appropriations shall be made from this annual income, and not from the principal of the fund. The act, moreover, appropriates the sum of \$ 242,129, being the interest which accrued on the principal in the interval between September 1, 1838, and July 1, 1846, or so much of it as should be deemed necessary, for the erection of suitable buildings and for other current incidental expenses of the Institution. Any stocks or moneys received into the Treasury on account of the Smithsonian funds were pledged to repay the sums thus appropriated.

The act made it the duty of the Board of Regents to select a suitable site for such building as might be necessary for the Institution; and to cause to be erected "a suitable building, of plain and durable materials and structure, without unnecessary ornament, and of sufficient size, and with suitable rooms, or halls, for the reception and arrangement, upon a liberal scale, of objects of natural history, including a geological and mineralogical cabinet; also a chemical laboratory, a library, a gallery of art, and the necessary lecture-rooms." The Regents were authorized to contract for the completion of this building, described thus in detail; and a sum which was left blank in the act, together with any balance of the annual interest remaining unexpended after paying the current expenses of the Institution, was appropriated for the purpose.

These provisions are contained in the first five sections of the act. We can hardly express the tenor of the next three sections more concisely than by quoting them in full:—

"SEC. 6. *And be it further enacted,* That, in proportion as suitable arrangements can be made for their reception, all objects of art and of

foreign and curious research, and all objects of natural history, plants, and geological and mineralogical specimens, belonging, or hereafter to belong, to the United States, which may be in the city of Washington, in whosoever custody the same may be, shall be delivered to such persons as may be authorized by the Board of Regents to receive them, and shall be arranged in such order, and so classed, as may best facilitate the examination and study of them, in the building so as aforesaid to be erected for the Institution ; and the Regents of said Institution shall afterwards, as new specimens in natural history, geology, or mineralogy, may be obtained for the museum of the Institution, by exchanges of duplicate specimens belonging to the Institution (which they are hereby authorized to make), or by donation, which they may receive, or otherwise, cause such new specimens to be also appropriately classed and arranged. And the minerals, books, manuscripts, and other property of James Smithson, which have been received by the government of the United States, and are now placed in the Department of State, shall be removed to said Institution, and shall be preserved separate and apart from other property of the Institution.

“SEC. 7. *And be it further enacted*, That the Secretary of the Board of Regents shall take charge of the building and property of said Institution, and shall, under their direction, make a fair and accurate record of all their proceedings, to be preserved in said Institution ; and the said Secretary shall also discharge the duties of librarian and keeper of the museum, and may, with the consent of the Board of Regents, employ assistants ; and the said officers shall receive for their services such sum as may be allowed by the Board of Regents, to be paid semi-annually on the first day of January and July ; and the said officers shall be removable by the Board of Regents, whenever, in their judgment, the interests of the Institution require any of the said officers to be changed.

“SEC. 8. *And be it further enacted*, That the members and honorary members of said Institution may hold such stated and special meetings, for the supervision of the affairs of said Institution and the advice and instruction of said Board of Regents, to be called in the manner provided for in the by-laws of said Institution, at which the President, and, in his absence, the Vice-President of the United States shall preside. And the said Regents shall make, from the interest of said fund, an appropriation, not exceeding an average of twenty-five thousand dollars annually, for the gradual formation of a library composed of valuable works pertaining to all departments of human knowledge.”

Besides the ninth, of which more hereafter, there remain two additional sections, one of which gives the Institution a

copy of every copyrighted work ; and the other, the last, reserves to Congress the right to amend or repeal the provisions of the act. No use has as yet been made of this reserved right.

Such is the law prescribing the plan for the Smithsonian Institution,—the plan which seemed to Congress, after the most mature deliberation, the best. Had the provisions of this law been duly executed, there would now be at Washington a noble institution, of which the nation would have a right to be proud. It is because this law has not been faithfully carried out that there is dissatisfaction and controversy.

It will be observed that Congress, by providing a fund for the building, separate from the principal fund, permitted the Institution to command its full annual income from the outset for the execution of the plan laid down. Ample means were placed at the disposal of the Regents for the erection of a building, which was expected to cost *less* than the arrears of interest ; for the act appropriated *so much* of that sum as the Regents deemed necessary for the erection of suitable buildings *and* for other current incidental expenses. It is true, that in another place, where it was intended to name a limit to the cost of the building, which was unfortunately omitted, any balance of the annual income remaining after the payment of the current expenses was appropriated for the building, in addition to the blank sum. The evident intent of the act, however, was that the cost of the building should fall within and be defrayed from the arrears of interest, while the income of the principal fund should be annually devoted to the maintenance of the Institution, the resources of which on account of this fund would thus be as large the first year of its existence as at any time afterwards.

This was a most excellent arrangement. In the first place, it was generous ; for Congress, in replacing the principal fund, performed a generous act, which might have been held to absolve the nation from the further liberality of paying the interest supposed to have accrued under an imaginary loan of that principal to the Treasury, eight years previously. In the next place, the arrangement was especially wise, in that it should have relieved the managers of the Institution from any diffi-

culty in deciding how far they would diminish its permanent resources by an investment in building. This would have been an embarrassing question if the funds of the Institution had been aggregated in one sum. Questions of this nature have generally arisen in similar cases, and have proved very troublesome. As a single instance, we may mention the Peabody Institute, at Danvers, founded by the munificence of the generous London merchant, a native of that town. He gave a very handsome sum of money to the town, for the establishment of a literary institution there. As soon as the preparations were made to begin work, the trustees found themselves embarrassed to decide how large expense they should incur for the building. A building was undoubtedly necessary; but if they should pay the whole cost of such a one as they thought suitable from the fund, they would very materially reduce it, and, in consequence, reduce their annual income. Besides, Mr. Peabody had prohibited this. On the contrary, if they should pay the whole cost from the income, the completion of the building would be greatly protracted, and meanwhile the institution would be entirely paralyzed. The embarrassment was relieved when news of it came to Mr. Peabody's ears, by a prompt additional donation from him for the building. The Girard College is a notorious instance of the waste of the means of a charitable institution in erecting a costly edifice. So deeply impressed was the late John Lowell, junior, the founder of the Lowell Institute in Boston, with the proneness of those in charge of funds in such cases to make an extravagant or injudicious use of them in the erection of buildings, that he expressly prohibited the expenditure of any portion of the funds of the Lowell Institute for such purpose. The halls which are required for the institution are hired, and not owned, by it.

Now it was against precisely this sort of difficulty and embarrassment that Congress attempted to guard, by the generous appropriation of a separate sum of \$ 242,129, *out of which* the building was designed to be erected. Yet, strange to say, the Regents, with a folly that seems to us almost incredible, have entirely neutralized this wise and judicious provision of Congress, by expending a considerable portion of the income

upon the building, which has exceeded in cost the arrears of interest. By this means the resources of the Institution have been crippled from the beginning to the present time. Instead of bursting at once into the vigor of full life, as was intended, it has struggled through a cramped and painful infancy.

The object of this injudicious manœuvre was the enlargement of the future annual income of the Institution, by the addition to the principal of a part of the arrears of interest. Even this has failed, in the degree anticipated, on account of the extravagant cost of the building. It is probable, however, that \$ 100,000, perhaps \$ 150,000, may be added to the principal, so that the annual income may become \$ 40,000 instead of \$ 30,910. This will undoubtedly be an advantage, but it is an advantage purchased, in our opinion, at far too dear a cost. In America, the people are impatient of procrastination, and it is a serious blemish upon the good name of the Smithsonian Institution, that it has so lazily entered upon its career of usefulness. Eight years is a long delay.

Whether this proceeding was legal or not, our readers must judge. We have informed them of the provisions of the law. The Regents have more than once petitioned Congress to pass an act confirming the addition to the principal of a part of the income, but Congress has steadily refused. The financial provisions of the law relative to the building doubtless exhibit some obscurity, from the blank in the place where a limit is mentioned for the cost of the building. But it is quite clear that the act contemplated no such procedure. If Congress had thought it best to add the arrears of interest to the principal, and make one sum, the law would have been so drafted; and if Congress had intended to allow the fund to increase by an accumulation of interest, the passage of the act might have been delayed for a further period. The Regents should have hesitated before taking the step, doubtfully legal, of withholding for eight more years the advantages of the Smithsonian Institution, already too long postponed.

Besides the mode of paying for the building, we object to its extravagant cost. A quarter of a million dollars* is a

* The expenditures upon the building to December 31, 1853, amounted to

large sum to be spent upon such a building. The building for the Library of Harvard College cost eighty thousand dollars, and that for the Boston Athenæum cost one hundred and thirty thousand dollars, and there has been a great deal of complaint at the cost of both. Without pausing to compare the Smithsonian Institution building with either of these, it is sufficient to say that it obviously cannot possess any features which will account for the enormous disproportion in its cost.

There would be good ground for further objecting to the building, that it does not answer the description of the law, quoted above, that it should be “of *plain* and durable materials and structure, *without unnecessary ornament.*” It is useless, however, to complain of these matters now. The building is at length nearly finished; and however much we may regret its cost, its character, and the way in which it has been paid for, it is too late to alter them.

It will have been observed, from the statement of the provisions of the act of Congress which we have given above, that, besides the building, the plan of the Institution, as laid down in the act, embraced the following features, and no others; namely, a museum of natural history, including a geological and mineralogical cabinet, a chemical laboratory, a library, a gallery of art, and the necessary lecture-rooms. It will have been further observed, that no specific appropriation is made for any of these except the library, which is distinguished from the rest by the provision of the eighth section of the act, which renders it *obligatory* upon the Regents to make from the interest of the fund “an appropriation not exceeding an average of twenty-five thousand dollars annually for the gradual formation of a library, composed of valuable works pertaining to all departments of human knowledge.” Abundant provision for the museum was made in the sixth section, by the donation to the Institution of the valuable and extensive collections already belonging to the United States, and of all similar objects hereafter to be acquired. Additions to the

\$ 244,393. During the nine months since, the amount must have been swelled to more than \$ 250,000, as the expenditures in the year 1853 were nearly \$ 30,000. The building is at length believed to be *nearly finished.*

collections, by exchanges of duplicates and by donation, are spoken of, but there is no appropriation of money. The chemical laboratory involves but little cost; very little, we believe, has been expended upon it since it was originally furnished. The gallery of art and the "*necessary* lecture-rooms" likewise involve little expense. "The necessary lecture-rooms" has been held to imply the employment of lecturers, and rather less than one thousand dollars a year has been expended in this way. But, on the whole, the exigencies of the Institution in practice have harmonized with the expectations of Congress as indicated by the provisions of the law; and no considerable expenditure has been required to effect the purposes of the act on a liberal scale, for any of the objects mentioned in it, except the library, for which Congress appropriated, as we have seen, a sum not exceeding an average of \$ 25,000 per annum, or about five sixths of the annual income.

Had an average annual appropriation of \$ 25,000 been actually made for the library, in eight years the sum of \$ 200,000 would have been so expended, and there would be at Washington a magnificent library containing two hundred thousand volumes.

In point of fact, the library contains but twelve thousand books, and eight thousand other articles (pamphlets, maps, music, engravings), making a total of twenty thousand. The cost of books up to the end of the year 1853, instead of being \$ 200,000, had been only \$ 11,972.66, and the whole expenditure for library, museum, and gallery of art, including salaries and incidentals of every description, amounted only to \$ 44,757.24. There is thus a balance against the Regents, to be accounted for, of \$ 155,242.76, if the whole of these expenditures be allowed to have been made for the library, and \$ 188,027.34, if the cost of books only be reckoned. These are heavy deficits, even in these modern days of mammoth defalcations.

What has become of the money? The gross amount of expenditures under all heads, to the close of the year 1853, was \$ 405,027. Of this sum, \$ 244,393 was spent upon the building, as already stated, leaving the amount expended for

other objects, \$ 160,634. This sum has been spent as follows: * —

For the Museum	\$ 9,493.78
For the Chemical Laboratory	
For the Library	34,962.91
For the Gallery of Art	300.55
For Lectures (including apparatus) .	6,712.12
There is a heavy account under the head of "General Expenses" of which half is allowed as a liberal estimate of what may have been necessarily incurred in carrying out the provisions of the act, say	32,804.43
Total expenditure authorized by the act of Congress	————— \$ 84,273.79

There has been further paid, —

For printing "Smithsonian Contributions to Knowledge"	\$ 26,566.64
Printing Reports on the Progress of Knowl- edge	3,609.77
Other Publications	2,962.96
Meteorological Investigations . . .	6,891.55
"Computations"	1,050.00
"Investigations"	425.00
Salaries, Publications, &c.	2,050.00
Half of "General Expenses" as above	32,804.43
Total expenditure <i>for objects not sanctioned by the act of Congress</i>	————— 76,360.35
Aggregate	160,634.14
Cost of building	244,393.00
Total expenditure to December 31, 1853	\$ 405,027.14

* We take these figures from Mr. Meacham's Report. They state the expenditures under the various heads, to the end of the year 1853.

The Secretary of the Institution is sadly behindhand in his reports. The law requires a report to be submitted to Congress annually. The report for the year 1852 (which is called the *Seventh Annual Report*, although the seventh year did not begin till August 10, 1852, and expired August 10, 1853) was transmitted to Congress March 1, 1853. This contains the latest official information accessible to the public, — at the time we write, twenty months old, — except that given in Mr. Meacham's Report, which brings the figures forward a year later, according to the *Eighth Annual Report*, for the year 1853, which was submitted to Congress in July, and is not printed at the time of writing.

There is nothing put down separately to the laboratory in any of the accounts.

Mr. Meacham further shows, that a strict examination of the accounts would exhibit a still larger amount expended for unauthorized objects.

It may be said, that the direction of the law does not absolutely require the Regents to spend the full sum of twenty-five thousand dollars every year upon the library, since its language is "a sum *not exceeding on an average* twenty-five thousand dollars." This is undoubtedly true; but it by no means follows that the course of the Regents in expending half the income upon objects wholly unauthorized by the act, to the neglect of the library, is justifiable. The most that can be assumed is, that this language barely allows a niggardly appropriation for the library; but it cannot be pretended that it gives the least authority for extravagant expenditures for other objects. Even if the language were less mandatory than it is, it could not be deemed a justification of the course of the Regents. There could be but two justifiable grounds for deeming it inexpedient to spend the full sum allowed by the law. It might be thought that other objects *mentioned in the act* (as the museum, laboratory, gallery of art, or lectures) required more than the balance of the income; or it might be thought that so large an expenditure was in itself wasteful and imprudent. But neither of these grounds has been, or can be, alleged in justification of the niggardly appropriation, averaging less than two thousand dollars a year, for the library. The money withheld from the library has not been spent upon the museum, the laboratory, the gallery of art, or for lectures, but for objects not sanctioned by the law. There has been no pretence of any investigation into the needs of the library; by those controlling the purse-strings, it has been thought of only to be shunned.

This brings us to the consideration of the ninth section of the act, which is adduced as affording a sanction to all the proceedings of the Regents, however wide of the path marked out by Congress. As this section is relied upon as a sort of universal "indulgence" which excuses all misdoings, we desire to direct particular attention to it. We quote it in full:—

"SEC. 9. *And be it further enacted*, That of any other moneys which have accrued, or shall hereafter accrue, as interest upon the said Smith-

sonian fund, not herein appropriated, or not required for the purposes herein provided, the said managers are hereby authorized to make such disposal as they shall deem best suited for the promotion of the purpose of the testator, anything herein contained to the contrary notwithstanding."

Now it would be sufficient to remark, that if this section overrides the whole act, so that it renders nugatory all its other provisions with regard to the objects to be effected, and gives the Regents plenary authority to do as they please with the funds, — the rest of the act is of less worth than the parchment on which it is engrossed, and the labor spent by Congress in perfecting it was the merest idleness. This idea is so utterly baseless, that we are surprised to find it seriously urged.

The absurdity of the allegation that this ninth section justifies the Regents in expending the funds of the Institution for purposes not even mentioned in the act, to the neglect of those which they were directed by Congress to cherish, appears clearly when we examine its language. It simply provides that the Regents may "make such disposal as they shall deem best suited for the promotion of the purpose of the testator" of *any other moneys*, "not herein appropriated, or not required for the purposes herein provided." The discretion, by the very terms of the act, does not extend to the moneys appropriated by the act, or required to carry out its purposes.

In order to facilitate an interpretation of this ninth section, which shall justify the proceedings of the Regents, it is attempted to show an incongruity between the will of Smithsonian and some of the provisions of the act of Congress; and it is maintained that the Regents are not bound to carry out such provisions of the act as in their judgment are not in harmony with the will, but may prefer other objects, which, in their judgment, are more in harmony with the will. In reply, we would first say, that we cannot find any such incongruity between the will and the act, and it is an insult to Congress to suppose that it exists. In the second place, we deny that, admitting there were any such incongruity, the Regents would be justified by it in expending the funds upon

objects not sanctioned by Congress. The United States has become the Trustee of these funds; the Regents are simply the servants appointed by Congress to carry out the conditions of the trust in the manner prescribed by Congress. If any one of these servants thinks his master is abusing his trust, and if he is therefore unwilling to become even an indirect party to what he deems a fraud, he can simply refuse to act; let him resign his thankless and unpaid office. But, as a subordinate, he cannot correct the errors of the authority above him by disobeying his orders.

This idea that the act of Congress does not honestly and faithfully carry out the will of Smithson, and that it devolves upon the Regents to correct the mistakes of Congress, though plainly hinted at, is not explicitly stated, in Mr. Pearce's Report. It was, perhaps, thought that members of Congress would not relish imputations upon the fidelity with which they have managed a trust, thrown out by a Board which has certainly not distinguished itself by the precision with which it has adhered to the directions prescribed for its conduct. The confusion which the idea necessarily involves, when plainly set forth, is very happily illustrated in Mr. Meacham's Report. Mr. Pearce would make it appear that the words "purposes of this act," in the ninth section, refer to the purposes as described in the title, preamble, and first section, namely, "the increase and diffusion of knowledge among men," — and to nothing else. Now by interchanging these phrases, and also substituting for "purpose of the testator" his own description of his purpose, the ninth section is made to read thus: —

"The Board of Regents are hereby authorized to make such disposal of any moneys not needed for the increase and diffusion of knowledge among men, as they shall deem best suited to promote the increase and diffusion of knowledge among men."

We may here remark that Mr. Pearce makes a liberal use of the *reductio ad absurdum*, with poor success; for some of his "absurdities" strike us as sound common-sense. He finds an able antagonist in Mr. Meacham, who exposes his logical fallacies with the hand of a master.

From what has been stated, we think thus much is quite clear;—that the Board of Regents have not adhered closely to the act of Congress under which they have their appointments; that, independently of several errors respecting the building, they have expended nearly half of the current resources of the Institution upon objects not sanctioned by Congress.

It is also evident, that they had authority under the act of Congress to have expended the magnificent sum of two hundred thousand dollars in collecting a library at Washington, which, by this time, would have altogether surpassed everything of the kind in America, and would be no mean rival of the splendid libraries of the Old World. Of this large sum which they might have thus spent, the Regents have expended for the purchase of books only twelve thousand dollars, or less than one sixteenth.

It is clear that there has been an expenditure of about half of the funds for unauthorized objects. We propose now to examine the Congressional history of the act, to see what Congress *intended* should be done with the funds, in confirmation of what has appeared from the examination of the act itself.

A number of plans, as we have already stated, had been proposed for the Smithsonian Institution, but none of them were received with any considerable degree of favor, until early in the year 1845, at which time there was a bill before the Senate which proposed to make the Institution chiefly a college or university for teaching the physical sciences. On the eighth day of January, 1845, Rufus Choate, then a Senator from Massachusetts, made a speech upon the subject, which will ever be regarded as a splendid offering on the shrine of literature by one of her most gifted votaries, and in future times will render more memorable the day on which it was delivered than that gallant military achievement of which it is the anniversary. In this speech, Mr. Choate distinctly advocated the collection of a great library as the most expedient method of disbursing the funds of the Institution; and he proposed to amend the bill before the Senate in accordance with this purpose. His views met with extraordinary favor,

and all his amendments were adopted. It was thus provided that an annual appropriation of *not less than* twenty thousand dollars should be made *for the purchase of books and manuscripts*. Among the Senators whose approbation of this feature of the bill is recorded in unequivocal language was Mr. Pearce, the author of the Report named at the head of this article, in which he defends the policy of almost entirely withholding all appropriation from the library. A more remarkable instance of change of opinion without any change in circumstances to authorize it, can scarcely be adduced, even among the most cautious of inconsistent politicians, a school to which we did not suppose Mr. Pearce belonged. He has had the reputation of being an upright and open statesman. We are almost inclined, accordingly, to explain the inconsistency between his speech of 1845 and the Report of 1854 by attributing the authorship of the latter to some other pen than his own. If this conjecture should be well founded, Mr. Pearce, when he finds in what a ridiculous position he is placed by subscribing to sentiments so opposite to those he professed on the floor of the Senate nine years ago, will scarcely hesitate to avow publicly the fraud of which he has been made the dupe.

The speech of Mr. Choate to which we allude is preserved in the Appendix to the Congressional Globe for the Second Session of the Twenty-eighth Congress. It is the only one of his speeches of that session so preserved; but no prouder monument than this would be needed for his fame, even were there no others elsewhere. We have not space to review its positions, and will simply remark, that, in maintaining the importance of a large library, — such as the whole country does not now possess, — he quoted at considerable length from our own volumes.*

This bill, making the Institution a library, and directing an annual appropriation of not less than \$20,000 for the purchase of books and manuscripts, passed the Senate, January 23, 1845. The only votes upon it for which opportunity was offered in the House of Representatives were largely in its

* North American Review, Vol. VIII. p. 192; Vol. XLV. p. 137. Appendix to Congressional Globe, 2d Session, 28th Congress, p. 62.

favor; but the bill failed to pass that body in the pressure of business incident to the short session immediately preceding the inauguration of a new President.

The next year the subject was again brought up in the House. Mr. Robert Dale Owen introduced a bill contemplating a variety of objects. It was proposed among these to have a library, and to appropriate to it a large share of the income of the fund, viz. ten thousand dollars. Mr. Choate's term of service in the Senate had expired; but in the lower house of the Twenty-Ninth Congress was George P. Marsh of Vermont, lately our Minister at Constantinople, who warmly espoused his views upon this subject. Mr. Marsh, April 22, 1846, made an eloquent speech, in which he referred with approval to Mr. Choate's speech of the preceding year; he maintained that the appropriation for the library was unwisely restricted in Mr. Owen's bill, and devoted the hour allowed him by the rules of the House to advocating the enlargement of the appropriation, so as to make the library the chief and overshadowing feature of the Institution.

These views were sustained by the House; and when, a few days later, Mr. Marsh moved a series of amendments, "all with a view, as he said, to direct the appropriation *entirely* to the purposes of a *library*," (these are the exact words of the official record,) he was supported by the House, two to one. Everything supposed to be inconsistent with the grand idea of the library was stricken out. The appropriation for the library was raised to the sum of twenty-five thousand dollars, and in this shape the bill passed the House, April 29, 1846. It encountered little or no opposition in the Senate, — a few amendments were proposed, among them one restricting the appropriation for the library, but these were summarily voted down, — and the bill passed without amendment, and became a law.

This evidence does not allow the least shadow of doubt as to the meaning of Congress. We think that meaning plainly enough expressed in the act; but if there is the slightest obscurity when that alone is considered, there can be none when the record of the proceedings of Congress is consulted.

At this point we are forced to leave the subject for the pres-

ent. The points which we have chiefly desired to urge are, (1.) that the duty of the Regents is to carry out the plan for the Institution adopted by Congress, and not to contrive a plan of their own; (2.) that the act of Congress has not a word to authorize "active operations," "researches," or "publications," objects upon which the Regents have thus far expended about half the current funds of the Institution; and (3.) that Congress plainly intended and directed that a large library should be collected as the leading feature of the Institution, and that the intentions and directions of Congress in this respect have been most impudently disregarded.

The subject affords several topics of discussion which we have scarcely touched. We have not thought it necessary to prove at length that Congress did not contravene the spirit or the letter of Smithson's will in the act which was passed. We have not thought it necessary to prove that a library promotes the increase and diffusion of knowledge among men. We have not thought it necessary to prove that the Regents, as servants of the United States appointed to a specific duty, have no other choice than to perform that duty in the manner designated by the appointing power. We have not thought it necessary to consider the nature of the objects — whether good or bad, better or worse than a library — upon which the Regents have expended so much of the funds of the Institution. These points we have not discussed, because we think the former two sufficiently clear of themselves, and because the latter two are incidental to the main question now at issue. But we are convinced that their discussion would simply tend to confirm the importance of adhering to the library plan.

We suggest but a single one of the advantages of the library plan, which should especially recommend it. The collection of a great library is almost the only object which is not likely to be attained in any other way. The available fund of the Smithsonian Institution will be about seven hundred thousand dollars. Now it is manifestly better to spend this chiefly for some one thing that cannot be so well done with a less fund, than to separate it into portions for several objects. A library of 200,000 volumes is a great deal more than twice as good as a library of 100,000 volumes; but however many

publications the Institution may issue, the benefits of printing them will increase only in the same proportion as the number. A dozen separate institutions, each with a fund of \$ 50,000, can do as much — probably more — in the way of publications and researches, as the Smithsonian with \$ 600,000; but if each should collect the best library it could, the result would be far inferior to what the Smithsonian may have, and ought to have already. We may safely leave to the numerous respectable societies and other organizations the work of publications and researches; but there is no way in which the loss of the Smithson library — as it should be — can be replaced.

We ought to remark, before concluding this article, that, in speaking of the course of the Regents, we simply allude to the policy for which the Board is responsible. The Institution became committed to this at an early date, before its illegality and its evil results were known. The public, when disposed to complain, has been put off by being told to wait till the building should be completed. This answer seemed plausible. There have been at all stages, however, earnest and sincere objections to the policy of the Regents. The objections yielded in 1847 to a desire for harmony, and a plan was adopted called the “compromise,” by which it was attempted to satisfy all parties by allowing any excess over \$ 15,000 of the annual income to be appropriated for illegal objects, while \$ 15,000 was expressly reserved for the library, museum, and gallery of art. This plan has been deprived of its vitality by the absorption of funds for the building; and the friends of the library, who have rested since August 10, 1846, secure in the belief that their battle was fought and their victory won, have lately been startled by a proposition to rescind the so-called “compromise,” for the purpose of discarding the library entirely. This subject was referred to a Committee of the Board of Regents, whose divided opinions are contained in the two Reports named at the head of this article. That of Mr. Pearce is an elaborate specimen of special pleading, — an attempt to justify, by quibbles worthy of a police-court practitioner, a policy of which he must know that Congress never dreamed, even though he may have persuaded himself that the law is defective enough to allow it. Mr. Meacham’s Report is a full reply

to the other, and states the matter in substantial accordance with our own views.

The Board of Regents has not yet acted upon the subject as presented by these Reports. At a special meeting in July last the matter was deferred until the meeting in January next. We cannot help feeling assured that at that time they will see the importance of promptly retrieving the errors which now disfigure the management of the Institution.

ART. IX. — *A Treaty extending the Right of Fishing, and regulating the Commerce and Navigation between her Britannic Majesty's Possessions in North America and the United States, concluded in the City of Washington on the fifth day of June, Anno Domini 1854, between the United States of America and her Majesty the Queen of the United Kingdom of Great Britain and Ireland.* State Paper. Washington. 1854.

WE believe that this journal may claim the credit of having led the way in preparing the public mind for the great measure which has been consummated by the ratification, on the part of the United States, of the MARCY AND ELGIN TREATY, and by the passage through Congress of the *Free List* of articles enumerated therein. In our January number of 1852 an elaborate argument was presented, exhibiting the benefits that would flow from such an arrangement. At the moment when the Treaty went before the Senate of the United States, at its recent session, our article was republished in full by the Washington papers. It is well, perhaps, to mention these facts, in justice to the quarterly journals, which, in this instance at least, instead of bringing up the rear, in the venerable guise of Old Fogysism, actually took the lead, from the start, in the most dashy style of Young America, in one of the boldest progressive movements of the country and the age.

We propose, in the present article, to state the grounds of